

House Bill 867

By: Representative Hembree of the 67th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 9 of Title 33 of the Official Code of Georgia Annotated, relating to regulation of rates, underwriting rules, and related organizations, so as to provide that rates with regard to private passenger motor vehicle insurance may go into effect without the necessity of approval by the Commissioner of Insurance; to provide for procedures for filings; to provide for notice and hearing in the case of filings that are not in compliance; to provide for other filings; to provide for the contents of filings; to provide for procedures for aggrieved persons; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 9 of Title 33 of the Official Code of Georgia Annotated, relating to regulation of rates, underwriting rules, and related organizations, is amended by revising subsections (b) through (g) of Code Section 33-9-21, relating to maintenance and filing of rates, rating plans, rating systems, or underwriting rules, to read as follows:

"(b)(1) It is the legislative intent of this subsection to permit and encourage competition among companies on a sound financial basis and to establish a mechanism to ensure the provision of adequate insurance at reasonable rates to the citizens of Georgia.

(2) Any domestic, foreign, or alien insurer that is authorized to write insurance in this state must file with the Commissioner any rate, rating plan, rating system, or underwriting rule for all personal private passenger motor vehicle insurance. No such rate, rating plan, rating system, or underwriting rule will become effective, nor may any premium be collected by any insurer thereunder, unless the filing has been received by the Commissioner in his or her office and such filing has been approved by the Commissioner or a period of 45 days has elapsed from the date such filing was received by the Commissioner during which time such filing has not been disapproved by the Commissioner. The Commissioner shall be authorized to extend such 45 day period by

~~no more than 55 days at his or her discretion. If a filing is disapproved, notice of such disapproval order shall be given within 100 days of receipt of filing by the Commissioner, specifying in what respects such filing fails to meet the requirements of this chapter. The filer shall be given a hearing upon written request made within 30 days after the issuance of the disapproval order, and such hearing shall commence within 30 days after such request unless postponed by mutual consent. Such hearing, once commenced, may be postponed or recessed by the Commissioner only for weekends, holidays, or after normal working hours or at any time by mutual consent of all parties to the hearing. The Commissioner may also, at his or her discretion, recess any hearing for not more than two recess periods of up to 15 consecutive days each. In connection with any hearing or judicial review with respect to the approval or disapproval of such rates, the burden of persuasion shall fall upon the affected insurer or insurers to establish that the challenged rates are adequate, not excessive, and not unfairly discriminatory. After such a hearing, the Commissioner must affirm, modify, or reverse his or her previous action within the time period provided in subsection (a) of Code Section 33-2-23 relative to orders of the Commissioner. The requirement of approval or disapproval of a rate filing by the Commissioner under this subsection shall not prohibit actions by the Commissioner regarding compliance of such rate filing with the requirements of Code Section 33-9-4 brought after such approval or disapproval.~~

(3) For purposes of this subsection, a competitive market is presumed to exist unless the Commissioner, after notice and hearing, determines that a reasonable degree of competition does not exist within a market and issues a ruling to that effect. The ruling shall expire three years after issue unless rescinded earlier by the Commissioner or unless the Commissioner renews the ruling after a hearing and a finding as to the continued lack of a reasonable degree of competition. Any ruling that finds that competition does not exist shall identify the factors that cause the market not to be competitive and may also include a plan for enhancing competition. The Commissioner shall monitor the degree and continued existence of competition in Georgia on an ongoing basis and shall provide a measurement of competition in the market using the Herfindahl/Hirschmann Index or an equivalent economic measure to the General Assembly as part of the supplemental report provided in Code Section 33-2-8.1. An interested party may petition the Commissioner to initiate a hearing to examine whether a particular market is competitive.

(4) Any policy governed by this subsection shall become effective without prior approval of the Commissioner and may take effect on the date specified in the filing but not earlier than the date such policy is received by the department. No rate level change specified in this subsection shall be implemented until the onset of a new policy period.

1 (5) A filing submitted pursuant to paragraph (2) of this subsection shall include an
2 exhibit showing the calculation of the overall rate level change and an exhibit showing
3 the insurer's expense provisions. An insurer submitting a loss cost adjustment filing shall
4 include supporting information showing how the loss cost adjustment is calculated. The
5 Commissioner may request additional supporting information if the Commissioner does
6 not have enough information upon which to determine if the filing meets the
7 requirements of this chapter.

8 (6) A filing submitted pursuant to paragraph (2) of this subsection shall be considered
9 to comply with state law. However, if, within 30 days following receipt of the filing, the
10 Commissioner determines that it does not meet the requirements of this title, the
11 Commissioner shall, after a hearing held upon not less than ten days' written notice,
12 given to each insurer that made the filing and specifying the matters to be considered at
13 the hearing, issue an order specifying in detail the provisions of this title that the insurer
14 has violated and the reasons the filing is not in compliance. The order shall state a
15 reasonable future date on which the filing is to be considered no longer effective. An
16 order by the Commissioner pursuant to this paragraph shall be prospective and shall not
17 affect any contract issued or made before the effective date of the order. In connection
18 with such hearing, the burden of persuasion shall fall upon the Commissioner.

19 (7) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting
20 rule followed or adopted by an insurer or rating organization may request the insurer or
21 rating organization to review the manner in which the rate, plan, system, or rule has been
22 applied with respect to insurance afforded such person. The request shall be in writing
23 and may be made by his or her authorized representative. If the request is not granted
24 within 30 days after it is made, the requestor may treat it as rejected.

25 (8) Any person aggrieved by the action of an insurer or rating organization in refusing
26 the review requested or in failing or refusing to grant all or part of the relief requested
27 may file a written complaint and request for hearing with the Commissioner, specifying
28 the grounds relied upon. If the Commissioner has information concerning a similar
29 complaint, he or she may deny the hearing. If the Commissioner believes that probable
30 cause for the complaint does not exist or that the complaint is not made in good faith, he
31 or she shall deny the hearing. Alternatively, and if he or she finds that the complaint
32 charges a violation of this subsection and that the complainant would be aggrieved if the
33 violation is proven, the Commissioner shall, after a hearing held upon not less than ten
34 days' written notice given to the insurer against whom the complaint is made and
35 specifying the matters to be considered at the hearing, issue an order specifying in detail
36 the provision of this title that the insurer has violated and reasons the rate or underwriting
37 rule is not in compliance.

1 (9) Every advisory organization and every insurer that makes its own rates shall, within
2 time frames promulgated by the Commissioner or, in the absence of time frames, within
3 a reasonable time after receiving written request, furnish to an insured affected by a rate
4 made by it, or to the authorized representative of the insured, all pertinent information as
5 to the rate.

6 (10) Nothing in this subsection shall be construed to repeal or modify Chapter 6 of this
7 title, relating to unfair trade practices.

8 (11) Nothing in this subsection shall be construed to repeal or modify Code
9 Section 33-9-4, relating to standards applicable to making and use of rates.

10 (12) Rates shall not be excessive or be unfairly discriminatory.

11 (13) For purposes of this subsection, an insurer using a rate for which the insurer has
12 failed to file the rate, supplementary rate information, or supporting information, as
13 required by this subsection, shall have committed a separate violation for each day the
14 failure continues.

15 (14) If the Commissioner determines according to the standards set forth in this
16 subsection that there is not a competitive market in Georgia, any domestic, foreign, or
17 alien insurer that is authorized to write insurance in this state must file with the
18 Commissioner any rate, rating plan, rating system, or underwriting rule for all personal
19 private passenger motor vehicle insurance. No such rate, rating plan, rating system, or
20 underwriting rule will become effective, nor may any premium be collected by any
21 insurer thereunder, unless the filing has been received by the Commissioner in his or her
22 office and such filing has been approved by the Commissioner or a period of 45 days has
23 elapsed from the date such filing was received by the Commissioner during which time
24 such filing has not been disapproved by the Commissioner. The Commissioner shall be
25 authorized to extend such 45 day period by no more than 55 days at his or her discretion.
26 If a filing is disapproved, notice of such disapproval order shall be given within 100 days
27 of receipt of filing by the Commissioner, specifying in what respects such filing fails to
28 meet the requirements of this chapter. The filer shall be given a hearing upon written
29 request made within 30 days after the issuance of the disapproval order, and such hearing
30 shall commence within 30 days after such request unless postponed by mutual consent.
31 Such hearing, once commenced, may be postponed or recessed by the Commissioner only
32 for weekends, holidays, or after normal working hours or at any time by mutual consent
33 of all parties to the hearing. The Commissioner may also, at his or her discretion, recess
34 any hearing for not more than two recess periods of up to 15 consecutive days each. In
35 connection with any hearing or judicial review with respect to the approval or disapproval
36 of such rates, the burden of persuasion shall fall upon the affected insurer or insurers to
37 establish that the challenged rates are adequate, not excessive, and not unfairly

discriminatory. After such a hearing, the Commissioner must affirm, modify, or reverse his or her previous action within the time period provided in subsection (a) of Code Section 33-2-23 relative to orders of the Commissioner. The requirement of approval or disapproval of a rate filing by the Commissioner under this subsection shall not prohibit actions by the Commissioner regarding compliance of such rate filing with the requirements of Code Section 33-9-4 brought after such approval or disapproval.

~~(c) When a rate filing of an insurer required under subsection (b) of this Code section is not accompanied by the information upon which the insurer supports the filing and the Commissioner does not have sufficient information to determine whether the filing meets the requirements of this chapter, then the Commissioner must request in writing, within 20 days of the date he or she receives the filing, the specifics of such additional information as he or she requires and the insurer shall be required to furnish such information and in such event the 45 day period provided for in subsection (b) of this Code section shall commence as of the date such information is furnished.~~

~~(d)~~(c) Any domestic, foreign, or alien insurer that is authorized to write insurance in this state must file with the Commissioner any rate, rating plan, rating system, or underwriting rule at least 45 days prior to any indicated effective date for all insurance other than personal private passenger motor vehicle insurance. No rate, rating plan, rating system, or underwriting rule required to be filed under this subsection will become effective, nor may any premium be collected by any insurer thereunder, unless the filing has been received by the Commissioner in his or her office not less than 45 days prior to its effective date.

~~(e)~~(d) When a rate filing of an insurer required under subsection ~~(d)~~(c) of this Code section results in any overall rate increase of 10 percent or more within any 12 month period, the Commissioner shall order an examination of that insurer to determine the accuracy of the claim reserves, the applicability of the claim reserve practices for the loss data used in support of such filing, and any other component of the rate filing; provided, however, that in the event the overall increase is less than 25 percent within any 12 month period and the Commissioner affirmatively determines that he or she has sufficient information to evaluate such rate increase and that the cost thereof would not be justified, he or she may waive all or part of such examination. In all other rate filings required under subsection ~~(d)~~(c) of this Code section, the Commissioner may order an examination of that insurer as provided in this subsection. Such examination shall be conducted in accordance with the provisions of Chapter 2 of this title. Upon notification by the Commissioner of his or her intent to conduct such examination, the insurer shall be prohibited from placing the rates so filed in effect until such examination has been reviewed and certified by the Commissioner as being complete. Such examination, if conducted by the Commissioner, shall be reviewed and certified within 90 days of the date such rate, rating plan, rating system, or

underwriting rule is filed; provided, however, if the Commissioner makes an affirmative finding that the examination may not be completed within the 90 day period, he or she may extend such time for one additional 60 day period. Any examination required under this Code section shall be conducted in accordance with Chapter 2 of this title.

~~(f)~~(e) Notwithstanding the provisions of subsection ~~(d)~~(c) of this Code section, in the event the filing of any rate, rating plan, rating system, or underwriting rule under subsection ~~(d)~~(c) of this Code section is not necessary, in the judgment of the Commissioner, to accomplish the purposes of this chapter as set forth in Code Section 33-9-1, then the Commissioner may exempt all domestic, foreign, and alien insurers from being required to file such rate, rating plan, rating system, or underwriting rule.

~~(g)~~(f) Filings required pursuant to this Code section shall be accompanied by a fee or fees as provided in Code Section 33-8-1."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.